

REGULATION 16

PUBLICLY TRADED CORPORATIONS AND PUBLIC OFFERINGS OF SECURITIES

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GENERAL

16.010 Definitions. As used in Regulation 16:

1. "Acquire control" or "acquiring control" means any act or conduct by a person whereby he obtains control, whether accomplished through the ownership of equity or voting securities, ownership of rights to acquire equity or voting securities, by management or consulting agreements or other contract, by proxy or power of attorney, by statutory mergers, by consummation of a tender offer, by acquisition of assets, or otherwise.
2. Unless otherwise specified, "chairman" means the chairman of the state gaming control board or his designee.
3. "Control," when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, and when used as a verb, means to possess, directly or indirectly, such power.
4. "Controlling person" with respect to a publicly traded corporation means each person who controls the publicly traded corporation.
5. "Corporate acquisition opposed by management" means an attempt to acquire control of a publicly traded corporation that is an affiliated company by means of a tender offer that is opposed by the board of directors of the affiliated company.
6. "Corporate licensee" means a corporation that is licensed pursuant to NRS 463.160 or 463.650 and that is registered with the board and commission pursuant to NRS 463.520.
7. "Current market price" means the average of the daily closing prices for the 20 consecutive trading days immediately preceding the date of a transaction or the closing price on the day immediately preceding the date of such transaction, whichever is higher. For the purpose of this definition, the closing price for each day shall be the last reported sale price, regular way, or in case no such reported sale takes place on such date, the average of the last reported bid and asked prices, regular way, in either case on the principal national securities exchange registered under the Securities Exchange Act of 1934 on which such security is admitted to trading or listed, or if not listed or admitted to trading on any national securities exchange, the closing price of such security, or in case no reported sale takes place, the average of the closing bid and asked prices, on NASDAQ or any comparable system, or if such security is not listed or quoted on NASDAQ or any comparable system, the closing sale price, or in case no reported sale takes place, the average of the closing bid and asked prices, as furnished by any member of the National Association of Securities Dealers, Inc., selected from time to time by the issuer for that purpose.
8. "Debt restructuring" means:
 - (a) A proceeding under the United States Bankruptcy Code; or
 - (b) Any out-of-court reorganization of a person that is insolvent or generally unable to pay its debts as they become due.
9. "Exceptional repurchase of securities" means the direct or indirect purchase by a corporation of securities representing beneficial ownership of more than 1 percent of its voting securities, whether in a single transaction or a series of related transactions, at a price more than 10 percent above the current market price of such securities on the date of the agreement to purchase such securities from any person, other than a person who has been an executive officer or a member of the board of directors for at least the past 2 years, who, on the date of the agreement to purchase, is the beneficial owner of more than 3 percent of the voting securities of such corporation and has been the beneficial owner of more than 3 percent of such securities for less than 1 year, unless such purchase has been approved by the affirmative vote of a majority of the holders of voting securities voting on the transaction exclusive of the selling security holder, or is pursuant to the same offer and terms as made to all holders of voting securities of such class, other than holders, if any, who have consented in writing to be excluded from the class of offerees, executive officers, or members of the board of directors. For the purpose of this definition, when determining whether a corporation has purchased more than 1 percent of its voting securities, the amount of voting securities of such corporation shall be deemed to include voting securities issuable pursuant to purchase rights where the price of the purchase rights is less than the current market price of such securities on a given determination date provided, however, that in any event, the amount of such voting securities beneficially owned by a selling security holder pursuant to purchase rights shall be included to determine the amount of the corporation's voting securities for purposes of such computation if not otherwise included based on the foregoing provision.
10. "Executive officer," with respect to a publicly traded corporation, means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policy-making functions for a publicly traded corporation.
11. "Federal Securities Act" means Title 15 United States Code sections 77a–77aa, as amended from time to time, and the rules and regulations of the United States Securities and Exchange Commission now or hereafter promulgated thereunder.
12. "Federal Securities Exchange Act" means Title 15 United States Code sections 78a–78kk, as amended from time to time, and the rules and regulations of the United States Securities and Exchange Commission now or hereafter promulgated thereunder.
13. "Full disclosure" with respect to a transaction or to a series of transactions means a descriptive statement thereof that does not make an untrue statement of a material fact nor omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
14. "Institutional investor" means:

- (a) A bank as defined in Section 3(a)(6) of the Federal Securities Exchange Act;
 - (b) An insurance company as defined in Section 2(a)(17) of the Investment Company Act of 1940, as amended;
 - (c) An investment company registered under Section 8 of the Investment Company Act of 1940, as amended;
 - (d) An investment advisor registered under Section 203 of the Investment Advisors Act of 1940, as amended;
 - (e) Collective trust funds as defined in Section 3(c)(11) of the Investment Company Act of 1940, amended;
 - (f) An employee benefit plan or pension fund that is subject to the Employee Retirement Income Security Act of 1974, as amended, excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the commission;
 - (g) A state or federal government pension plan;
 - (h) A group comprised entirely of persons specified in (a) through (g); or
 - (i) Such other persons as the commission may determine for reasons consistent with the policies expressed in NRS 463.0129 and 463.489.
- To qualify as an institutional investor, a person other than a state or federal pension plan must meet the requirements of a "qualified institutional buyer" as defined in Rule 144A of the Federal Securities Act.

15. "Plan of recapitalization" means a plan proposed by the board of directors to the security holders of a publicly traded corporation that is an affiliated company, which plan:

- (a) Contains recommended action in response to a corporate acquisition opposed by management, which acquisition cannot be consummated until approval has been obtained pursuant to section 16.200, and which acquisition has not been consummated, withdrawn or terminated;
- (b) Involves either a cash dividend to voting securities or an exchange of voting securities held by security holders in return for a payment of cash or the issuance of securities of the issuer or a combination of cash and securities of the issuer, with an aggregate value in excess of 50 percent of the aggregate current market price of the voting securities of the company on the day of the public announcement of the plan of recapitalization; and
- (c) Is financed in substantial part by borrowings from financial institutions or the issuance of debt securities.

16. "Public offering" means a sale of securities that is subject to the registration requirements of section 5 of the Federal Securities Act, or that is exempt from such requirements solely by reason of an exemption contained in section 3(a)10, 3(a)11 or 3(c) of said Act or Regulation A adopted pursuant to section 3(b) of said Act.

17. "Purchase rights" means a security or contractual right in securities issued or issuable on the exercise of options, warrants or other beneficial interest in securities obtained for value upon the issuance of securities, or on conversion of other securities.

18. "Speculative securities" means:

- (a) Securities, the value of which depends substantially upon proposed or promised future promotion or development rather than on material existing assets, conditions or operating results; or
- (b) Securities, an investment in which involves an extraordinary risk of loss to the investor.

19. "Tender offer" means a public offer by a person other than the issuer to purchase voting securities of a publicly traded corporation that is an affiliated company, made directly to security holders for the purpose of acquiring control of the affiliated company.

20. "Voting security" means a security the holder of which is entitled to vote for the election of a member or members of the board of directors or board of trustees of a corporation or a comparable person or persons in the case of a partnership, trust, or other form of business organization other than a corporation.

(Adopted: 5/73. Effective: 9/73. Amended: 3/83; 9/88; 10/92.)

16.020 Burden of proof. The burden of proof for the granting of any approval required or permitted by Regulation 16 is at all times upon the applicant. Each applicant shall satisfy the commission or the board, as the case may be, that the granting of any approval required or permitted by Regulation 16 is consistent with the state policies concerning gaming set forth in NRS 463.0129, 463.489, and 463.621 to 463.622.

(Adopted: 5/73. Effective: 9/73. Amended: 3/83; 9/88.)

16.030 Powers of commission and board.

1. Without in any way limiting the generality of the provisions of NRS 463.140 and 463.1405, in connection with any recommendation or action, the board or commission may provide:

- (a) That a time period be accelerated or extended; or
- (b) That as a condition to the processing of an application or to the granting of an approval:
 - (1) An application be supplemented in any particular and to any extent either before or after the commission has acted thereon;

- (2) An applicant or other person urging the approval or denial of an application appear personally before the board and commission and submit to interrogation under oath or otherwise;
 - (3) Funds, securities, instruments or agreements be placed in escrow upon specified conditions;
 - (4) A transaction be in compliance with the applicable laws and regulations of any federal, state, or local governmental entity or agency;
 - (5) A transaction be approved by an applicant's board of directors;
 - (6) An opinion of an applicant's legal counsel be furnished to the commission;
 - (7) An opinion of an applicant's auditors be furnished to the commission;
 - (8) All or any portion of an application be examined or evaluated by a consultant to the commission at the expense of the applicant.
2. The commission has the power to delegate to the chairman, in its order granting approval, the power to issue an interlocutory stop order. The interlocutory stop order may be issued for any cause deemed reasonable by the chairman.
(Adopted: 5/73. Effective: 9/73. Amended: 7/75; 10/78; 3/83; 9/88.)

16.040 Commission review of stop orders. If a stop order is issued by the chairman pursuant to the provisions of Regulation 16, the commission shall, upon request of the person that is the subject of the order, conduct a hearing on the merits of the matter no later than its next regular meeting for which notice of the hearing pursuant to chapter 241 of NRS is practicable.
(Adopted: 3/83. Amended: 9/88.)

16.050 Timing of investigations and approvals.

1. The chairman is hereby delegated the power to accelerate or extend the time period in which the board may grant approval of any act for which approval by the board is required or permitted by Regulation 16.
2. The commission shall use its best efforts to take final action upon an application pursuant to section 16.200 by a person making a tender offer, section 16.250, and section 16.260 within 60 days of the date upon which the application is filed and any fees are paid consistent with the public policy of this state concerning gaming as provided in NRS 463.0129, 463.489, and 463.622. If the commission cannot take final action upon the application within 60 days of filing of such application, the commission shall transmit to the applicant written notice of a time certain for completion of the investigation and the final action of the commission. The notice required by this subsection shall be transmitted at least 10 days prior to the sixtieth day after the filing of the application.
(Adopted: 3/83. Amended: 9/88.)

16.060 Standards for board and commission action. The board and commission will consider all relevant material facts in determining whether to grant an approval required or permitted by Regulation 16. With respect to any approvals requested pursuant to or in accordance with sections 16.100 through 16.140, sections 16.200 through 16.210, or sections 16.250 through 16.280, the board and commission may further consider not only the effects of the action or approval requested by the applicant, but whatever other facts are deemed relevant, including but not limited to the following:

1. The business history of the applicant, including its record of financial stability, integrity, and success of its operations.
 2. The current business activities and interest of the applicant, as well as those of its executive officers, promoters, lenders, and other sources of financing, or any other individuals associated therewith.
 3. The current financial structure of the applicant, as well as changes which could reasonably be anticipated to occur to such financial structure as a consequence of the proposed action of the applicant.
 4. The gaming-related goals and objectives of the applicant, including a description of the plans and strategy for achieving such goals and objectives.
 5. The relationship between such goals and objectives and the requested approval.
 6. The adequacy of the proposed financing or other action to achieve the announced goals and objectives.
- The present and proposed compensation arrangement between the applicant and its directors, executive officers, principal employees, security holders, lenders, or other sources of financing.
8. The equity investment, commitment or contribution of present or prospective directors, officers, principal employees, investors, lenders, or other sources of financing.
 9. The dealings and arrangements, prospective or otherwise, between the applicant and any investment bankers, promoters, finders or lenders, and other sources of financing.
 10. The effect of the proposed action on existing and prospective security holders of the applicant, both before and after the intended action.

11. Whether the applicant has made full and complete disclosure of all material facts relative to the proposed action to the board and the commission and made provision for such disclosure to all prospective security holders.
 12. Whether the proposed action tends not to work a fraud upon the public.
 13. Whether a proposed public offering contains speculative securities.
 14. Whether a proposed transaction will create a significant risk that the publicly traded corporation and its affiliated companies will not:
 - (a) Satisfy their financial obligations as they become due; or
 - (b) Satisfy all financial and regulatory requirements imposed by chapter 463 of NRS and the regulations adopted by the commission.
- (Adopted: 5/73. Effective: 9/73. Amended: 10/78; 3/83; 9/88.)

PUBLIC OFFERINGS

16.100 Corporate licensees. A corporate licensee shall not guarantee a security issued by an affiliated company pursuant to a public offering, nor hypothecate its assets to secure the payment or performance of the obligations evidenced by a security issued by an affiliated company pursuant to a public offering, without first obtaining the prior approval of the commission.

(Adopted: 5/73. Effective: 9/73. Amended: 3/83; 9/88; 3/06.)

16.110 Public offerings of affiliated companies. Prior approval of the commission is required for any public offering of any securities of an affiliated company:

1. Which is not a publicly traded corporation if the securities will be offered by such an affiliated company or by a controlling person thereof.
 2. Which is a publicly traded corporation if the securities will be offered by such affiliated company and if such securities or the proceeds from the sale thereof are intended to be used:
 - (a) To pay for construction of gaming facilities in Nevada to be owned or operated by the affiliated company or a subsidiary of the affiliated company;
 - (b) To acquire any direct or indirect interest in gaming facilities in Nevada;
 - (c) To finance the operation by the affiliated company or a subsidiary of such affiliated company of gaming facilities in Nevada; or
 - (d) To retire or extend obligations incurred for one or more such purposes.
- (Adopted: 5/73. Effective: 9/73. Amended: 10/78; 3/83.)

16.115 Continuous or delayed public offerings.

1. An affiliated company which is a publicly traded corporation may apply for approval of a continuous or delayed public offering of its securities if such an affiliated company:
 - (a) Has a class of securities listed on either the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers Automatic Quotation System, or has stockholders' equity in an amount of \$15 million or more as reported in its most recent report on Form 10-K or Form 10-Q filed with the United States Securities and Exchange Commission immediately preceding the application; and
 - (b) Has filed all reports required to be filed by section 13 or section 15(d) of the Federal Securities Exchange Act, or in the case of a foreign issuer or foreign private issuer, pursuant to Regulations 13d-16 and 15a-16 of the Federal Securities Exchange Act, during the preceding 12 months, or for such a shorter period that such affiliated company has been required to file such reports.
 2. The commission may grant approval of a continuous or delayed offering for a period of up to 2 years. An approval granted pursuant to this regulation does not constitute an approval of other related transactions for which separate board or commission approval is otherwise required by chapter 463 of NRS or the regulations adopted by the commission.
 3. If an application is approved, the affiliated company shall notify the board of its intent to make the public offering and identify the type and amount of securities it proposes to sell and the date on which it is anticipated the sale will occur. If such notification is not written, it must be followed, as soon as practicable, with a written confirmation which need not precede such sale.
- (Adopted: 3/83. Amended: 9/88; 11/96; 3/06.)

16.118 Public offerings by entities not presently licensees or affiliated companies.

1. Any entity that is not a licensee or an affiliated company or otherwise subject to the provisions of the Act or the regulations which plans to make a public offering of securities intending to use such securities, or the proceeds from the sale thereof, to construct gaming facilities in Nevada

to be operated by the entity, or a subsidiary of the entity, or any other corporation or other form of business organization under common control with the entity, to acquire any direct or indirect interest in gaming facilities in Nevada, to finance the operation by the entity, or a subsidiary of the entity, or any other corporation or other form of business organization under common control with the entity, of gaming facilities in Nevada, or to retire or extend obligations incurred for one or more such purposes, may apply to the commission for prior approval of such an offering.

2. After recommendation by the board, the commission may act on any such application.

3. Any entity which submits an application pursuant to this regulation shall pay all costs connected with the processing of the application including but not limited to investigative costs.

4. An approval sought under this regulation will not include a finding regarding the suitability of the individuals involved.

5. The commission may find an entity unsuitable based solely on the fact that it did not submit an application pursuant to subsection 1, unless the chairman has ruled pursuant to subsection 6, that it is not necessary to submit an application pursuant to subsection 1.

6. Upon receipt of a written request for a ruling, the chairman may issue an administrative ruling that it is not necessary for an entity to submit an application pursuant to subsection 1 upon review of such factors as the chairman deems appropriate, including but not limited to the following:

(a) The standards enumerated in Regulation 16.060;

(b) Whether the entity has any applications pending before the board and commission and if so, the nature of such applications;

(c) The operational and ownership structure and history of the entity;

(d) A description of the regulatory authorities that the entity is subject to the jurisdiction of and the entity's regulatory history; and

(e) Such other facts as the chairman may deem relevant and material.

7. Any entity for which the commission has approved an application submitted pursuant to subsection 1 shall cause the following statement to be included in the prospectus, offering circular or other offering document, or if such a document is not required by law the offeror shall maintain adequate records that the statement was furnished to potential investors, for the public offering which was approved by the commission:

Because proceeds of this offering are to be used in connection with gaming facilities in Nevada, the entity making the offering voluntarily sought and received approval of the Nevada Gaming Commission to make the offering. That approval relates solely to the terms of the offering. It does not constitute a finding that the entity has been or will be found qualified to be involved with gaming activities in Nevada for which a separate Nevada Gaming Commission approval will be required. It also does not involve a finding by the Nevada Gaming Commission as to the accuracy or adequacy of this document.

(Adopted: 3/83. Amended: 1/95.)

16.120 Certain public offerings and stockholder approvals. The commission may find a publicly traded corporation unsuitable to be a holding company of a corporate licensee if:

1. At a time when the applicant was not subject to the jurisdiction of the commission it made a public offering of securities intending to use such securities, or the proceeds from the sale thereof, to construct gaming facilities in Nevada to be operated by the applicant, or a subsidiary of the applicant, or any other corporation or other form of business organization under common control with the applicant, to acquire any direct or indirect interest in gaming facilities in Nevada, to finance the operation by the applicant, or a subsidiary of the applicant, or any other corporation or other form of business organization under common control with the applicant, of gaming facilities in Nevada, or to retire or extend obligation incurred for one or more such purposes; or

2. At a time when the applicant was not subject to the jurisdiction of the commission it obtained the approval or consent of its stockholders to have a material involvement with gaming in the State of Nevada, and in connection with such offering, approval or consent, it did not make a full disclosure of all material facts to the offerees or its stockholders relating to such material involvement including, without limitation, a description of the nature and scope of the state and applicable local laws of Nevada regarding gaming control.

(Adopted: 9/73. Amended: 10/78; 3/83.)

16.125 Approval of securities issuable on exercise of options or warrants or conversion of other securities. If the commission approves a public offering of securities which involves securities issuable on exercise of purchase rights, such approval is deemed continuing for the entire period of exercisability or convertibility and further approval is not required for the actual issuance of such securities.

(Adopted: 3/83. Amended: 9/88.)

16.130 Application for approval of public offering. A person applying for approval of a public offering pursuant to Regulation 16 shall make a full disclosure of all material facts relating thereto to the board and commission. To the extent applicable, the application must include the following information:

1. A description of the securities to be offered.
2. The terms upon which the securities are to be offered.
3. The gross and net proceeds of the offering, including a detailed list of expenses.
4. The use of proceeds.
5. The name and address of the lead underwriter and the participating underwriters, if any.
6. The forms of the underwriting agreement, the agreement among underwriters, if any, and the selected dealers agreements, if any.
7. A statement of intended compliance with all applicable federal, state, local and foreign securities laws.
8. The names and addresses of the applicant's general counsel, local counsel, special securities counsel, independent auditors, and any special consultants on the offering.
9. If any securities to be issued are not to be offered to the general public, the names and addresses of the other offerees and the form of the offering thereto.
10. True copies or descriptions of all papers filed with the United States Securities and Exchange Commission and all material communications between the applicant and the United States Securities and Exchange Commission or, if the offering is not subject to the registration requirements of Section 5 of the Federal Securities Act other than by reason of an exemption contained in Regulation A adopted pursuant to Section 3 of said Act, copies or descriptions of all papers filed with, and all material communications between the applicant and such other governmental entity charged with securities regulation, if any. A copy of each registration statement and each amendment thereto must be filed with the board by the end of the next business day after their filing with the United States Securities and Exchange Commission. All other papers required to be included pursuant to this subsection must be filed with the board as soon as practicable.
(Adopted: 5/73. Effective: 9/73. Amended: 10/78; 3/83.)

16.140 Coordination. The board and commission will ordinarily permit an application for approval of a public offering pursuant to Regulation 16 to be completed over a period of time as documents and information become available in accordance with the normal and customary practice in the securities industry. An application may be filed without all the information required by Regulation 16.130 if all such information required by the board or commission is supplied prior to the sale of the securities.
(Adopted: 5/73. Effective: 9/73. Amended: 10/78; 3/83.)

MERGERS, ACQUISITIONS AND CHANGES OF CONTROL

16.200 Approval of acquisition of control. A publicly traded corporation shall not directly or indirectly acquire control of a corporate licensee or affiliated company, and a person shall not acquire control of a publicly traded corporation which is an affiliated company, without the prior approval of the commission.
(Adopted: 5/73. Effective: 9/73. Amended: 3/83; 9/88.)

16.210 Application for approval of acquisitions of control. An application for approval of a transaction subject to Regulation 16.200 must contain full disclosure of all material facts relating thereto, and include to the extent applicable:

1. The information required by NRS 463.635(1)(b).
2. The terms and provisions of the contemplated transaction.
3. A statement of any contemplated management and operating changes to be effected after completion of the contemplated transaction, and
4. Copies or descriptions of all material documents and correspondence filed with the United States Securities and Exchange Commission in connection with the contemplated transaction, if any, or, if the transaction is not subject to the Federal Securities Act, copies or descriptions of all material documents and correspondence filed with such other governmental entity charged with securities regulation, if any.
(Adopted: 5/73. Effective: 9/73. Amended: 10/78; 3/83; 9/88.)

16.250 Approval of plan of recapitalization. Except as provided by section 16.270, a publicly traded corporation that is an affiliated company shall not consummate a plan of recapitalization without the prior approval of the commission.
(Adopted: 9/88.)

16.260 Approval of exceptional repurchases of securities. Except as provided by section 16.270, a publicly traded corporation that is an affiliated company shall not make an exceptional repurchase of securities without the prior approval of the commission.
(Adopted: 9/88.)

16.270 Exempt transactions. Unless otherwise required by the provisions of chapter 463 of NRS or the regulations adopted by the commission, and notwithstanding the provisions of section 16.250 and section 16.260, the approval of the board or commission is not required before a publicly traded corporation that is an affiliated company may repurchase securities issued by such corporation if:

1. The repurchase is made pursuant to contractual rights or arrangements, including without limitation puts and price guarantees, given the issue of such securities or his designee at the time of the original issuance of the security;
2. The repurchase is made for purposes of compromising a bona fide dispute with a security holder arising from the original issuance of such securities;
3. The repurchase is made pursuant to calls or redemptions of any securities in accordance with the terms and conditions of the governing instruments of such securities;
4. The repurchase involves securities evidenced by a scrip certificate, order form, or similar document that represents a fractional interest in a share of stock or similar securities;
5. The repurchase is made pursuant to a statutory procedure for the purchase of dissenting security holders' securities;
6. The repurchase is made in order to comply with any court or administrative order;
7. The repurchase is made in accordance with or to effectuate the provisions of any employee compensation arrangement, employee stock plan, or employee benefit program including, without limitation, an employee stock ownership plan or to eliminate or cancel outstanding employee stock options or create a "disposition" for federal income tax purposes as to securities acquired as a result of the exercise of an employee incentive stock option as defined under the Internal Revenue Code;
8. The repurchase involves a transaction or series of related transactions occurring within a fiscal quarter in which the aggregate price of the securities purchased is less than the greater of \$1 million or 5 percent of the consolidated net worth of the corporation purchasing the securities determined using the most recent audited financial statements of the corporation or the financial statements most recently filed by the corporation with the Securities and Exchange Commission; or
9. The repurchase is made pursuant to a publicly announced open market securities repurchase program in which the price and other terms of sale are not negotiated between the purchaser and seller.

(Adopted: 9/88.)

16.280 Application for approval of recapitalization plan or exceptional securities repurchases. An application for approval of a plan of recapitalization subject to section 16.250 or an exceptional repurchase of securities subject to section 16.260 must contain full disclosure of all material facts relating thereto, and include to the extent applicable:

1. The terms and provisions of the contemplated transaction.
2. A statement of any contemplated management and operating changes to be effected after completion of the contemplated transaction.
3. An analysis showing on a pro forma basis the effect of the transaction on the financial statements of the publicly traded corporation that is an affiliated company.
4. A general description of the source of funds for the purchase and any financing arrangements.
5. Copies or descriptions of all material documents and correspondence filed with the United States Securities and Exchange Commission in connection with the contemplated transaction, if any, or, if the transaction is not subject to the Federal Securities Act, copies or descriptions of all material documents and correspondence filed with any other governmental entity charged with securities regulation.
6. Any other documents, papers, reports, or other information deemed relevant by the chairman.

(Adopted: 9/88.)

MARKETS AND TRADING

16.300 Fraudulent and deceptive practices prohibited. It is grounds for disciplinary action under NRS 463.641 or 463.310 of these regulations if any person, in connection with the purchase or sale of any security issued by a corporate licensee or an affiliated company or in connection with any document required to be filed pursuant to Regulation 16 or the Act:

1. Employs any device, scheme or artifice to defraud; or
2. Makes any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
3. Engages in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; where it is determined by the commission that such device, scheme, artifice, statement, act, practice or course of business materially adversely affects the gaming industry in the State of Nevada.

(Adopted: 5/73. Effective: 9/73. Amended: 10/78; 3/83; 9/88.)

16.310 Approval of proxy and information statements related to gaming.

1. Before any person sends to the holders of a voting security of a publicly traded corporation a proxy statement subject to Regulation 14A of the United States Securities and Exchange Commission, or an information statement subject to Regulation 14C of the United States Securities and Exchange Commission, and includes a discussion of the nature and scope of, and procedures under, the Act and regulations, such proxy statement or information statement must be approved by the board.

2. A proxy statement or information statement is deemed to have been approved if it has been filed with the board for at least 10 days and the board has not issued a stop order during such period.

(Adopted: 5/73. Effective: 9/73. Amended: 7/75; 10/78; 3/83; 9/88.)

16.320 Listing on securities exchange.

1. An affiliated company which does not have a class of voting securities listed on a securities exchange registered under Section 6 of the Federal Securities Act, shall not list any securities on a securities exchange without the prior approval of the board. An application for such approval is deemed to have been approved if it has been filed with the board for at least 30 days and the board has not issued a stop order during such period.

2. An affiliated company which has a class of voting securities listed on a securities exchange registered under Section 6 of the Federal Securities Exchange Act may, at any time and without the prior approval of the commission, list on any securities exchange registered under Section 6 of the Federal Securities Act any of its securities or make supplemental listings of any securities.

(Adopted: 5/73. Effective: 9/73. Amended: 10/78; 3/83.)

16.330 Reporting requirements.

1. Whenever any material document, including any document considered to be confidential or furnished to the holders of voting securities of the publicly traded corporation, is filed by a publicly traded corporation with the United States Securities and Exchange Commission or with any national or regional securities exchange, such publicly traded corporation shall within 5 business days file a true copy of such document with the board.

2. Whenever a publicly traded corporation receives any material document filed with the United States Securities and Exchange Commission by any other person relating to such publicly traded corporation, it shall, within 10 days following such receipt, file a true copy of such document with the board.

3. Each publicly traded corporation shall file with the board annually a list of the holders of its voting securities or more frequently as such lists are prepared.

4. Each publicly traded corporation shall promptly report to the board, on the form prescribed by the board, the election or appointment of any director, any executive officer and any other officer actively and directly engaged in the administration or supervision of the gaming activities at a licensed gaming establishment of the corporate licensee.

5. Whenever a publicly traded corporation is informed that any person determined by the commission to be a controlling person in respect of such corporation has disposed of any of such corporation's voting securities, such corporation shall thereupon promptly report such information to the board.

6. Each publicly traded corporation shall file promptly with the board such other documents within its control as the board or commission may lawfully request.

(Adopted: 5/73. Effective: 9/73. Amended: 10/78; 3/83; 9/88.)

16.340 Form of stock certificates. The commission may require that after a date specified by the commission each certificate representing a security issued by any publicly traded corporation include a brief description, in form and substance satisfactory to the commission, of the provisions of the Act and regulations or a portion thereof. Each publicly traded corporation which is required to include such a description on certificates shall file a sample of the form of the certificates, by class, not less than 10 days prior to the first use of such form of certificate.

(Adopted: 5/73. Effective: 9/73.)

INDIVIDUALS

16.400 Powers of commission. The commission may determine, upon the recommendation of the board, at the time of initial application by a publicly traded corporation for registration as a holding company or at any time thereafter that the public interest and the purposes of the Act require that any individual who has a material relationship to, or material involvement with, a publicly traded corporation and is subject to the jurisdiction of the Act should apply for a finding of suitability or licensing. A person may be deemed to have a material relationship to, or material involvement with, a corporation if he is a controlling person or key employee of the corporation, or if he, as an agent, consultant, advisor or otherwise, exercises a significant influence upon the management or affairs of the corporation. The foregoing powers of the commission are not limited to individuals having a formal and direct involvement or relationship with a publicly traded corporation nor to individuals who are beneficial owners of any stated percentage of the outstanding equity securities of a publicly traded corporation.

(Adopted: 5/73. Effective: 9/73. Amended: 10/78.)

16.405 Beneficial owners of voting securities.

1. The commission shall consider the provisions of NRS 463.643(1), (2), and (3) in making its determination as to which beneficial owners of voting securities of publicly traded corporations must or may be required to be found suitable or to be licensed.

2. All rules and regulations of the Securities and Exchange Commission applicable in determining whether a person is the beneficial owner of a particular equity security for purposes of Section 13(d) of the Federal Securities Exchange Act may be considered by, but shall not be binding upon, the commission in making its determination whether, and the extent to which, a person is the beneficial owner of a voting security for the purposes of NRS 463.643, and sections 16.010(8), 16.330, 16.405, and 16.430 of this regulation.

3. NRS 463.643 applies to every person who is, directly or indirectly, the beneficial owner of any voting security in a publicly traded corporation which is registered with the commission, irrespective of the time of acquisition of such ownership.

4. If any securities of a publicly traded corporation are held in street name, by a nominee, an agent or trust, the publicly traded corporation shall render maximum assistance to the board, upon its request, to determine the beneficial ownership of such securities.

(Adopted: 10/78. Amended: 9/88.)

16.410 Officers and employees.

1. The commission shall require application for finding of suitability and may require licensing of any officer or employee of a publicly traded corporation whom the commission finds to be actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of a corporate gaming licensee.

2. The commission may require application for licensing or finding of suitability by any officer or employee of a publicly traded corporation whose application is not otherwise required pursuant to paragraph 1 of this regulation and NRS 463.637(1), if the commission determines that the policies of the state regarding gaming would be served by such action.

3. The following officers or employees of the publicly traded corporation are deemed to be actively and directly engaged in the administration or supervision of, and significantly involved with, the activities of the corporate licensee and therefore are normally required to be licensed or found suitable:

(a) Each employee who is involved in gaming and who is also a director of the publicly traded corporation; and

(b) The president, any persons performing the function of principal executive officer or principal operating officer, the principal accounting officer, and secretary.

(Adopted: 5/73. Effective: 9/73. Amended: 10/78.)

16.415 Directors.

1. The commission shall require application for finding of suitability and may require licensing of any director whom the commission finds to be actively and directly engaged in the administration or supervision of the gaming activities at a licensed gaming establishment of a subsidiary corporate licensee.

2. The commission may require application for licensing or finding of suitability by any director of a publicly traded corporation whose application is not otherwise required by paragraph 1 of this regulation and NRS 463.637(1), if the commission determines that the policies of the state regarding gaming would be served by such action.

3. The following directors of the publicly traded corporation are deemed to be actively and directly engaged in the administration or supervision of the gaming activities of the subsidiary corporate licensee and therefore are normally required to be licensed or found suitable:

- (a) Each director who serves as chairman of the board of directors;
- (b) Each director who, individually or in association with others, is the beneficial owner of greater than 1 percent of any class of voting securities of the registered publicly traded corporation for which he serves as a director; and
- (c) Each person, whether as director or otherwise, who serves on the executive committee of the board of directors, or who serves on any comparable committee to which is delegated the authority of the board of directors to act in any matter involving the activities of a corporate gaming licensee.

(Adopted: 10/78.)

16.420 Appointments and elections. Except in a transaction subject to Regulation 16.200 which involved a change of control of a publicly traded corporation as a whole, an individual may be appointed or elected to a position described in Regulations 16.410 or 16.415 without the prior approval of the commission, and may occupy the position and exercise the authority and duties thereof until otherwise ordered by the commission. The commission may impose stricter requirements, including a requirement of prior approval, on any publicly traded corporation or with respect to any individual at any time.

(Adopted: 9/73. Amended: 10/78; 9/88.)

16.430 Institutional investor.

1. An institutional investor that becomes or intends to become subject to NRS 463.643(4) as a result of its beneficial ownership of voting securities of a publicly traded corporation registered with the commission may apply to the commission for a waiver of the requirements of NRS 463.643(4) with respect to the beneficial ownership of the voting securities of such publicly traded corporation if such institutional investor holds the securities for investment purposes only; provided, however, that an institutional investor shall not be eligible to receive or hold a waiver if the institutional investor beneficially owns, directly or indirectly, except as otherwise provided in subsection 2, more than 25 percent of the voting securities and if any of the voting securities were acquired other than through a debt restructuring. Voting securities acquired before a debt restructuring and retained after a debt restructuring or as a result of an exchange, exercise or conversion, after a debt restructuring, of any securities issued to the institutional investor through a debt restructuring, shall be deemed to have been acquired through a debt restructuring. A waiver granted under this section shall be effective only as long as the institutional investor's direct or indirect beneficial ownership interest in such voting securities meets the limitations set forth above, and should the institutional investor's interest exceed such limitations at any time, it shall be subject to NRS 463.643(4).

2. An institutional investor that has been granted a waiver pursuant to subsection 1, may beneficially own more than 25 percent, but not more than 29 percent, of the voting securities of a publicly traded corporation registered with the commission, only if such additional ownership results from a stock repurchase program conducted by such publicly traded corporation, and upon the condition that such institutional investor does not purchase or otherwise acquire any additional voting securities of the publicly traded corporation that would result in an increase in the institutional investor's ownership percentage.

3. An institutional investor shall not be deemed to hold voting securities for investment purposes only unless the voting securities were acquired and are held in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the members of the board of directors, any change in the corporate charter, bylaws, management, policies or operations of the publicly traded corporation registered with the commission or any of its gaming affiliates, or any other action which the commission finds to be inconsistent with investment purposes only. The following activities shall not be deemed to be inconsistent with holding voting securities for investment purposes only:

- (a) Voting, directly or indirectly through the delivery of a proxy furnished by the board of directors, on all matters voted on by the holders of such voting securities;

- (b) Serving as a member of any committee of creditors or security holders formed in connection with a debt restructuring;
 - (c) Nominating any candidate for election or appointment to the board of directors in connection with a debt restructuring;
 - (d) Accepting appointment or election as a member of the board of directors in connection with a debt restructuring and serving in that capacity until the conclusion of the member's term;
 - (e) Making financial and other inquiries of management of the type normally made by securities analysts for informational purposes and not to cause a change in its management, policies or operations; and
 - (f) Such other activities as the commission may determine to be consistent with such investment intent.
4. An application for a waiver must include:
- (a) A description of the institutional investor's business and a statement as to why the institutional investor is within the definition of "institutional investor" set forth in Regulation 16.010(14).
 - (b) A certification made under oath and the penalty of perjury, that the voting securities were acquired and are held for investment purposes only as defined in subsection 2 and a statement by the signatory explaining the basis of his authority to sign the certification and to bind the institutional investor to its terms. The certification shall also provide that the applicant agrees to be bound by and comply with the Nevada Gaming Control Act and the regulations adopted thereunder, to be subject to the jurisdiction of the courts of Nevada, and to consent to Nevada as the choice of forum in the event any dispute, question, or controversy arises regarding the application or any waiver granted under this section.
 - (c) A description of all actions, if any, taken or expected to be taken by the institutional investor relating to the activities described in subsection 2.
 - (d) The name, address, telephone number and social security number of the officers and directors, or their equivalent, of the institutional investor as well as those persons that have direct control over the institutional investor's holdings of voting securities of the publicly traded corporation registered with the commission.
 - (e) The name, address, telephone number and social security or federal tax identification number of each person who has the power to direct or control the institutional investor's exercise of its voting rights as a holder of voting securities of the publicly traded corporation registered with the commission.
 - (f) The name of each person that beneficially owns more than 5 percent of the institutional investor's voting securities or other equivalent.
 - (g) A list of the institutional investor's affiliates.
 - (h) A list of all securities of the publicly traded corporation registered with the commission that are or were beneficially owned by the institutional investor or its affiliates within the preceding year, setting forth a description of the securities, their amount, and the date of acquisition or sale.
 - (i) A list of all regulatory agencies with which the institutional investor or any affiliate that beneficially owns voting securities of the publicly traded corporation registered with the commission files periodic reports, and the name, address, and telephone number of the person, if known, to contact at each agency regarding the institutional investor.
 - (j) A disclosure of all criminal or regulatory sanctions imposed during the preceding 10 years and of any administrative or court proceedings filed by any regulatory agency during the preceding 5 years against the institutional investor, its affiliates, any current officer or director, or any former officer or director whose tenure ended within the preceding 12 months. As to a former officer or director, such information need be provided only to the extent that it relates to actions arising out of or during such person's tenure with the institutional investor or its affiliates.
 - (k) A copy of the institutional investor's most recent Schedule 13D or 13G and any amendments thereto filed with the United States Securities and Exchange Commission concerning any voting securities of the publicly traded corporation registered with the commission.
 - (l) A copy of any filing made under 15 U.S.C. 18a with respect to the acquisition or proposed acquisition of voting securities of the publicly traded corporation registered with the commission.
 - (m) Any additional information the board or the commission may request.
5. The board and commission shall consider all relevant information in determining whether to grant a waiver requested pursuant to subsection 1, including but not limited to:
- (a) Whether the waiver is consistent with the policy set forth in NRS 463.0129, 463.489, and 463.622;
 - (b) The factors set forth within Regulation 16.060; and
 - (c) Any views expressed to the board and commission by the publicly traded corporation or any licensed affiliate thereof.
6. An institutional investor that has been granted a waiver of a finding of suitability and that subsequently intends not to hold its voting securities of the publicly traded corporation for investment purposes only, or that intends to take any action inconsistent with its prior intent shall, within 2 business days after its decision, deliver notice to the chairman in writing of the change in its investment intent. The chairman may then take such action under the provisions of NRS 463.643 as he deems appropriate.

7. A waiver of the requirements of NRS 463.643(4) that has been granted pursuant to this section and NRS 463.489(2) shall not be construed as a waiver of or exemption from the prior approval requirements of Regulation 16.200. An institutional investor that intends to apply for a waiver of the requirements of NRS 463.643(4) pursuant to this section must also simultaneously apply to the commission for an exemption from the prior approval requirements of Regulation 16.200 if:

(a) The proposed acquisition would give the institutional investor, directly or indirectly, the power to direct or cause the direction of the management and policies of the publicly traded corporation; or

(b) The institutional investor intends to increase its beneficial ownership to more than 20% but not more than 25% of the voting securities of the registered publicly traded corporation.

If at the time an institutional investor applies to the commission for a waiver of the requirements of NRS 463.643(4) it does not intend to increase its beneficial ownership to more than 20% of the voting securities of the registered publicly traded corporation but subsequently intends to increase to more than 20% but not more than 25%, it must apply to the commission for an exemption from the prior approval requirements of Regulation 16.200.

8. If the chairman finds that an institutional investor has failed to comply with the provisions of this section, or should be subject to a finding of suitability to protect the public interest, the chairman may, in accordance with NRS 463.643, require the institutional investor to apply for a finding of suitability. The institutional investor affected by the action taken by the chairman may request a hearing on the merits of such action. The hearing shall be included on the agenda of the next regularly scheduled commission meeting occurring more than 10 working days after the request for hearing. Upon good cause shown by the institutional investor, the commission chairman may waive the 10-day requirement and place such hearing on an earlier commission agenda. The commission, for any cause deemed reasonable, may by a majority vote, sustain, modify or reverse the decision of the chairman, or remand the matter to the chairman for such further investigation and reconsideration as the commission may order. While the application for a finding of suitability or commission review of the chairman's action requiring the filing of such application is pending, the institutional investor shall not, directly or indirectly, cause or attempt to cause any management, policy, or operating changes in the publicly traded corporation or any gaming affiliate.

9. Any publicly traded corporation registered with the commission or any registered or licensed subsidiary thereof shall immediately notify the chairman of any information about, fact concerning or actions of, an institutional investor holding any of its voting securities, that may materially affect the institutional investor's eligibility to hold a waiver under this section.

10. An institutional investor that is subject to NRS 463.643(4) as a result of its beneficial ownership of voting securities of a publicly traded corporation registered with the commission and that has not been granted a waiver pursuant to subsection 1, may beneficially own more than 10 percent, but not more than 11 percent, of the voting securities of such publicly traded corporation, only if such additional ownership results from a stock repurchase program conducted by the publicly traded corporation, upon the same conditions as provided in subsection 2. Unless otherwise notified by the chairman, such an institutional investor is not required to apply to the commission for a finding of suitability, but shall be subject to reporting requirements as prescribed by the chairman.

(Adopted: 10/19/92. Amended: 6/20/02; 1/21/10. Effective: 6/20/02.)

16.440 Proscribed activities with respect to "unsuitable" persons.

1. If a person required by the commission to apply for a finding of suitability fails, refuses or neglects to apply for a finding of suitability or a license within 30 days after the commission orders that such application be made, the commission may find such person to be unsuitable.

2. The commission may determine a publicly traded corporation registered with the commission to be unsuitable, or take other disciplinary action, if the publicly traded corporation, after the commission serves notice to the publicly traded corporation that a person is unsuitable to be a stockholder or to have any other relationship or involvement with such publicly traded corporation or with a corporate licensee or any other affiliated company:

(a) Pays to any person found to be unsuitable any dividend or interest upon any voting securities or any payment or distribution of any kind whatsoever except as permitted by paragraph (d) of this regulation;

(b) Recognizes the exercise by any such unsuitable person, directly or indirectly, or through any proxy, trustee or nominee, of any voting right conferred by any securities or interest in any securities referred to in NRS 463.643;

(c) Pays to any such unsuitable person any remuneration in any form for services rendered or otherwise except as permitted pursuant to NRS 463.645; or

(d) Fails to pursue all lawful efforts to require such unsuitable person to relinquish his voting securities including, if necessary, the immediate purchase of said voting securities by the publicly traded corporation for cash at fair market value.

(Adopted: 5/73. Effective: 9/73. Amended: 10/78.)

16.450 Exemptions.

1. The commission may, either generally or specifically, exempt a person, a security, a transaction, or any portion thereof, from the application of Regulation 16 or any portion thereof if the commission determines that such exemption is consistent with the purpose of the Act.
2. The commission may by its order, from time to time, delegate to the board the power to grant exemptions from the application of Regulation 16, to the extent, and within the scope, specified in such order.
(Adopted: 10/78. Amended: 9/88.)

TRANSITION PROVISIONS

16.900 Effective date. Regulation 16, as amended, shall be effective on September 21, 1988.
(Adopted: 5/73. Effective: 9/73. Amended: 10/78; 9/88.)

16.910 Current orders. All waivers, exemptions, rulings, conditions and orders which are effective on October 1, 1978, and which relate to the subject matter covered by the provisions of Regulation 16 shall continue according to their terms until altered or revoked in accordance with the Act and the regulations of the commission. Each order of the commission which is current on October 1, 1978, and which permits the compliance with NRS 463.635 to 463.641 instead of NRS 463.585 to 463.615 is hereby amended effective on and after October 1, 1978, to include compliance with Regulation 16, as amended, instead of Regulation 15.
(Adopted: 5/73. Effective: 9/73. Amended: 10/78; 9/88.)

16.920 Current proceedings. Repealed: 10/78.

End – Regulation 16